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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,547	12/17/2003	Samuel D. Griggs	9389-11	8315

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Julie H. Richardson
Myers Bigel Sibley & Sajovec, P.A.
P.O. Box 37428
Raleigh, NC 27627

EXAMINER

SIPOS, JOHN

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/738,547	Applicant(s) GRIGGS ET AL.	
	Examiner John Sipos	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-17,19,20,22-28,30-34,36-45,47-55,57-62 and 64-66 is/are pending in the application.
 4a) Of the above claim(s) 3,5,9,10,22,23,26,27,47,48,51&52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,4,6-8,11-17,19,20,24,25,28,30-34,36-45,49,50,53-55,57-62 and 64-66 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed 3/28/2005 has been entered.

Claims 18,29,35,56 and 63 have been cancelled.

Claims 3,5,9,10,22,23,26,27,47,48,51 and 52 are withdrawn from further consideration as result of restriction and election requirement.

Applicant's arguments have been considered but are not persuasive and therefore rejections similar to the ones made in the last Office action are repeated.

REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,3-17 and 19 are rejected under 35 U.S.C. ' 112, **second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "ingress portion" in the last line of claim 1 is unclear in that it has no antecedence and it is not clear how it structurally relates to the "entry segment" of the chute.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

Claims 1,4,6-8,12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Hengl (5,884,346). The patent to Hengle shows a product chute comprising of an outer wall 9,62

with an oval cavity, a flared entry segment 10,62a with a continuous ceiling and a handle 2,54.

Little patentable weight is given to the material placed on the chute since the claims are directed to the chute and the use of netting may or may not take place. Furthermore, the chute of Hengl is capable of holding any material including netting.

Claim 11 are rejected under **35 U.S.C.103(a)** as being unpatentable over the patent to Hengl (5,884,346) in view of Pieri (4,537,006). The patent to Hengl does not show an angled discharge end. The patent to Pieri shows a product chute that has an angled discharge end to more easily transfer the product from the chute to the tubular packaging material. It would have been obvious to one skilled in the art to form the discharge end of the chute of Hengl with an angled end as shown by Pieri to ease discharge of the product.

Claims 1,4,6-8,12,13,19,20,24,25,36,38-40 and 60 are rejected under **35 U.S.C.103(a)** as being unpatentable over the patent to Becker (4,505,003) in view of Marietta (3,945,171) and Weathers (6,708,742). The patent to Becker shows chute for supporting a tubular casing and for feeding sausage compositions or ham pieces and which chute comprises of an outer wall 1 with a cavity, a flared entry segment 12 with a continuous ceiling and a clipper assembly 18,19 that applies a clip to the tubular packaging material supported by the chute. The Becker chute does not comprise a non-circular cavity. The patent to Marietta shows a product chute that comprises a non-circular, oval chute with a planar floor that allows the feeding of larger solid products and which chute feeds the tubular packaging material to a clipping assembly. It would have been obvious to one skilled in the art to form the chute of Becker in an oval shape with a planar floor as shown by Marietta to ease the passing of solid products through the chute. Little patentable weight is given to the material placed on the chute since the claims are directed to the chute and

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the use of netting may or may not take place. Furthermore, the chute of Becker is capable of holding any material including netting. Regarding claims 19 and 36, the use of gaps or opening to allow access to the interior of a device for any purpose (e.g. cleaning) is well known in the art and would have been obvious to one skilled in the art to provide such opening to the Becker chute. Regarding claim 40, the tilting of the chute would have been obvious to one skilled in the art to aid in moving the product through the chute with the help of gravity.

The patent to Becker also does not show a handle. The patent to Weathers shows a product chute for supporting a container comprising of a non circular cross section with a flared entry segment 15 larger than the primary portion 16 of the chute and a handle 14 downstream of the flared segment that allows transporting of the chute. Note that in Figure 4 the container is placed on the primary portion without covering the handle. It would have been obvious to one skilled in the art to provide the chute of Becker with a handle as taught by Weathers to allow transporting of the chute.

Claims 1,4,12-16,19,20,30-33,36-40 and 60 are rejected under 35 U.S.C.103(a) as being unpatentable over the patent to Becker (4,505,003) in view of Tipper (3,499,259) and further in view of Weathers (6,708,742). The patent to Becker shows chute for supporting a tubular casing and for feeding sausage compositions or ham pieces and which chute comprises of an outer wall 1 with a cavity, a flared entry segment 12 with a continuous ceiling and a clipper assembly 18,19 that applies a clip to the tubular packaging material supported by the chute. The Becker chute does not comprise a non-circular cavity and a mounting bracket. The patent to Tipper shows a product chute that comprises a non-circular chute with a planar floor that allows the feeding of larger solid products and which chute feeds the tubular packaging material to a clipping

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assembly. It would have been obvious to one skilled in the art to form the chute of Becker in an oval shape with a planar floor as shown by Tipper to ease the passing of solid products through the chute. Little patentable weight is given to the material placed on the chute since the claims are directed to the chute and the use of netting may or may not take place. Furthermore, the chute of Becker is capable of holding any material including netting.

The patent to Tipper further shows in Figure 8 a releasable mounting bracket, which comprises a lower horizontal portion 93 and a vertical segment 104 that attaches to the chute. It would have been obvious to one skilled in the art to provide the Becker chute with a mounting bracket as shown by Tipper to allow releasable mounting of the chute on a supporting frame. Regarding claims 15 and 32, the use of a recess or concave contour in the mounting bracket to conform it to the desired shape of the chute floor would have been obvious to one skilled in the art to provide more support for the chute. Regarding claims 19 and 36, the use of gaps or opening to allow access to the interior of a device for any purpose (e.g. cleaning) is well known in the art and would have been obvious to one skilled in the art to provide such opening to the Becker chute.

The patent to Becker also does not show a handle. The patent to Weathers shows a product chute for supporting a container comprising of a non circular cross section with a flared entry segment 15 larger than the primary portion 16 of the chute and a handle 14 downstream of the flared segment that allows transporting of the chute. Note that in Figure 4 the container is placed on the primary portion without covering the handle. It would have been obvious to one skilled in the art to provide the chute of Becker with a handle as taught by Weathers to allow transporting of the chute.

Regarding claim 40, the tilting of the chute would have been obvious to one skilled in the art to aid in moving the product through the chute with the help of gravity.

Claims 11 and 28 are rejected under 35 U.S.C.103(a) as being unpatentable over the patent to Becker (4,505,003) in view of Tipper (3,499,259) or Marietta (3,945,171) and Weathers (6,708,742) and further in view of Pieri (4,537,006). The patent to Becker does not show an angled discharge end. The patent to Pieri shows a product chute that has an angled discharge end to more easily transfer the product from the chute to the tubular packaging material. It would have been obvious to one skilled in the art to form the discharge end of the chute of Becker with an angled end as shown by Pieri to ease discharge of the product.

Claims 17 and 34 are rejected under 35 U.S.C.103(a) as being unpatentable over the patent to Becker (4,505,003) in view of Tipper (3,499,259) or Marietta (3,945,171) and Weathers (6,708,742) and Pieri (4,537,006) and further in view Pierder (4,651,498). The patent to Becker lacks the use of a chute sensor. The patent to Pierder shows a product chute 34 that comprises a sensor 140 that senses the proper position of the chute (see column 4, line 29 et seq.). It would have been obvious to one skilled in the art to provide the chute of Becker with a chute position sensor as shown by Pierder to ensure proper operation of the filling operation.

Claims 41-45,49,50,54,55 and 57-59 are rejected under 35 U.S.C.103(a) as being unpatentable over the patent to Becker (4,505,003) in view of Tipper (3,499,259) or Marietta (3,945,171) and further in view Pierder (4,651,498). The patent to Becker lacks the use of a chute sensor. The patent to Pierder shows product chute 34 that comprises a sensor 140 that senses the proper position of the chute (see column 4, line 29 et seq.). It would have been obvious to one skilled in the art to provide the chute of Becker with a chute position sensor as

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shown by Pierder to ensure proper operation of the filling operation. The use of a recess or concave contour (claim 55) in the mounting bracket to conform it to the desired shape of the chute floor would have been obvious to one skilled in the art to provide more support for the chute.

Claim 53 is rejected under **35 U.S.C.103(a)** as being unpatentable over the patent to Becker (4,505,003) in view of Tipper (3,499,259) or Marietta (3,945,171) and and Pieri (4,537,006) and further in view Pierder (4,651,498). The patent to Becker lacks the use of a chute sensor. The patent to Pierder shows product chute 34 that comprises a sensor 140 that senses the proper position of the chute (see column 4, line 29 et seq.). It would have been obvious to one skilled in the art to provide the chute of Becker with a chute position sensor as shown by Pierder to ensure proper operation of the filling operation.

Claims 61 are rejected under **35 U.S.C.103(a)** as being unpatentable over the patent to Tipper (3,499,259) and further in view of Pieri (4,537,006) or alternatively Pieri in view of Tipper and further in view of Weathers (6,708,742). It would have been obvious to one skilled in the art to form the discharge end of the chute of Tipper with an angled end as shown by Pieri to ease discharge of the product. Alternatively, it would have been obvious to one skilled in the art to form the chute of Pieri in a non-circular shape with a planar floor as shown by Tipper to ease the passing of solid products through the chute.

The patent to Becker also does not show a handle. The patent to Weathers shows a product chute for supporting a container comprising of a non circular cross section with a flared entry segment 15 larger than the primary portion 16 of the chute and a handle 14 downstream of the flared segment that allows transporting of the chute. Note that in Figure 4 the container is

placed on the primary portion without covering the handle. It would have been obvious to one skilled in the art to provide the chute of Becker with a handle as taught by Weathers to allow transporting of the chute.

Claims 62 and 66 are rejected under **35 U.S.C.103(a)** as being unpatentable over the patent to Tipper (3,499,259) and further in view of Pierder (4,651,498). The patent to Tipper lacks the use of a chute sensor. The patent to Pierder shows product chute 34 that comprises a sensor 140 that senses the proper position of the chute (see column 4, line 29 et seq.). It would have been obvious to one skilled in the art to provide the chute of Tipper with a chute position sensor as shown by Pierder to ensure proper operation of the filling operation.

Claim 64 and 65 is rejected under **35 U.S.C.103(a)** as being unpatentable over the patent to Tipper (3,499,259). The use of a recess or concave contour in the mounting bracket to conform it to the desired shape of the chute floor would have been obvious to one skilled in the art to provide more support for the chute.

RESPONSE TO APPLICANT'S ARGUMENTS

Applicant's arguments with respect to the claims have been considered but are not persuasive.

Regarding the patent to Hengle Applicants argue by describing the operation and use of the device set forth in the patent. Since the claims are directed to a chute, the operation of the Hengle device is of little consequence to the claimed subject matter. The reference need only show the structure set forth in the claims. The type of material being supported by the claimed chute is an intended use and a material that the Hengle chute is fully capable of supporting.

Regarding the handle, Hengle shows handle 2 that is indirectly attached to the outer wall of the chute by being attached to the chute housing and it does extend away from the chute and a point downstream from the flared portion 7.

Regarding the patent to Becker, again Applicants are directing the arguments at the operation and use of the chute. The connection of the chute to an upstream plumbing is immaterial. The claims are directed only to the structure of the chute. As was stated above, the argument that "Becker is not directed to netting product chutes" is of little patentable significance because it is merely an intended use of the chute that may or may not be used to support netting and which the Becker chute is capable of supporting.

Regarding the Pierder reference, the Examiner maintains that the sensor 140 does sense the relative position of the horn in the machine. If the sensor does not sense aligned position of the horn and the feeding mechanism the feeding mechanism is not actuated.

Regarding the patent to Tipper, Applicants argue that different shapes of supporting brackets are not shown by the references. The Examiner maintains that the supporting bracket of Tipper is shown to extend across the bottom of the chute and it would have been obvious to one skilled in the art to conform such a bracket to any geometry that the bottom of the chute is designed to provide full support for the chute.

It should be noted that an alternate rejection could be made on the combination of Weathers in view of Becker or Hengl or Pollack. The later references show chutes that receive the products axially so that the chute can have a continuous ceiling that prevents the overflowing of the products and the modification of the Weathers chute accordingly would have been obvious to one skilled in the art for the above reason.

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Newly cited reference to Rahtican shows a container holding chute that comprises of a flared entry segment, a primary body and a handle downstream of the entry segment with the container being pulled onto the chute without covering the handle.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4668**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The FAX number for Group 3700 of the Patent and Trademark Office is **(703) 872-9302**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.


John Sipos
Primary Examiner
Art Unit 3721